IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

Crl.MC.No. 3338 of 2007()

CC.34/2005 of ADDL.CHIEF JUDICIAL MAGISTRATE (E & O),ERNAKULAM

.....

PETITIONER: ACCUSED

SHRI. AYOOB ISMAIL,
MUTHIRAVILLA VEEDU, BUILDING NO.259,
WARD NO.1, NATAYARA, S.N.COLLEGE ROAD,
CHERUTHURUTHY VILLAGE, CHIRAYINKIL TALUK,
THIRUVANANTHAPURAM.

BY ADV. SRI.R.ANIL
SMT.RESHMI POULOSE

RESPONDENTS: COMPLAINANT

---

1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. S.SIVADASAN,
DY. COMMISSIONER OF CUSTOMS, AIR CUSTOMS,
INTERNATIONAL AIRPORT, THIRUVANANTHAPURAM.

BY PUBLIC PROSECUTOR ADV.SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 01/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

= = = = = = = = = = = = = =

Crl.M.C. No.3338 Of 2007

= = = = = = = = = = = = = = =

Dated this the 1st day of November, 2007

ORDER

The petitioner faces indictment in a prosecution under the provisions of the Customs Act. The petitioner is the 2nd accused. The crux of the allegations against the petitioner is that the officials had seized foreign currencies from the 1st accused, which foreign currencies were allegedly produced by the 1st accused from the petitioner herein. The petitioner who is employed abroad has not entered appearance so far. The learned Magistrate has initiated coercive proceedings against the petitioner.

2. According to the petitioner he is absolutely innocent. The proceedings against the petitioner works out unnecessary hardship to the petitioner. The petitioner has in fact been exonerated by the authorities under Annexure A2 order. The learned counsel for the petitioner submits that the petitioner shall be satisfied if the petitioner is permitted to enter appearance before the learned Magistrate through counsel and advance his

plea for discharge under Section 245(2)Cr.P.C.

3. I am satisfied that the said request can be accepted. This petition is allowed in part. There shall be directions to the learned Magistrate:

i) Not to execute the warrant of arrest issued against the petitioner till 7.11.07 ,which is said to be the next date of posting of the case before the learned Magistrate.

ii) The petitioner shall be permitted to enter appearance through counsel and raise his plea of discharge straightaway under Section 245(2) Cr.P.C. The learned Magistrate shall consider such plea and pass appropriate orders under Section 245(2)Cr.P.C. expeditiously.

iii) Until a decision is taken on the question of discharge under Section 245(2) Cr.P.C, the petitioner shall be permitted to appear through counsel.

Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE